169

(3)

No. 09-951

IN THE

Supreme Court of the United States

NATIONAL RIGHT TO WORK
LEGAL DEFENSE FOUNDATION, INC.,
Petitioner,

v.

UNITE (Union of Needletrades,
Industrial & Textile Employees) *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILLIAM L. MESSENGER
Counsel of Record
c/o NATIONAL RIGHT TO
WORK LEGAL DEFENSE
FOUNDATION, INC.
8001 Braddock Road
Suite 600
Springfield, VA 22160
(703) 321-8510
wlm@nrtw.org

Counsel for Petitioner

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. THE IMPORTANCE OF THIS CASE IS UNDISPUTED	1
II. THE FINAL CLAUSE OF § 2721(b)(4) IS NOT DEPENDENT ON ANY OTHER CLAUSE OF § 2721(b)(4)	2
III. THE FUTURE OUTCOME OF THIS CASE IF THE THIRD CIRCUIT'S DPPA RULING IS REVERSED HAS NO BEARING ON THE VALIDITY OF THIS PETITION	5
CONCLUSION	6

TABLE OF AUTHORITIES

CASES — Page

E.E.O.C. v. National Children's Center, Inc., 146 F.3d 1042 (D.C. Cir. 1998) 5
Garcia v. United States, 469 U.S. 70 (1984) 3
Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana, 472 U.S. 237 (1985) 3
Reiter v. Sonotone Corp., 442 U.S. 330 (1979) 3
United States v. Wecht, 484 F.3d 194 (3d Cir. 2007) 5

STATUTES

Driver's Privacy Protection Act of 1994, 18 U.S.C. § 2721 *et seq.*,
18 U.S.C. § 2721(b) ..... *passim*

IN THE

Supreme Court of the United States

No. 09-951

NATIONAL RIGHT TO WORK
LEGAL DEFENSE FOUNDATION, INC.,
Petitioner,

v.

UNITE (Union of Needletrades,
Industrial & Textile Employees) *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. THE IMPORTANCE OF THIS CASE IS UNDISPUTED

UNITE's brief confirms that this petition involves an important question of statutory interpretation that should be resolved by this Court. Specifically, does the Driver's Privacy Protection Act of 1994, 18 U.S.C. § 2721 *et seq.* ("DPPA"), prohibit courts from authorizing the disclosure of evidence of violations of the DPPA?

UNITE argues that courts cannot authorize disclosure of information under § 2721(b)(4) of the DPPA unless the disclosure also satisfies another exception stated in § 2721(b). The Third Circuit agreed with this position. Petitioner National Right to Work Legal Defense Foundation disagrees, because § 2721(b)(4) of the DPPA grants courts the independent authority to permit parties to use information from motor vehicle records. Specifically, a federal court can permit the Foundation to use evidence of UNITE's violations of the DPPA to notify the victims of those violations under § 2721(b)(4). As discussed below, the statutory interpretation advanced by the Foundation is the correct one.

More crucially, UNITE does not dispute that this issue of statutory interpretation is an important one. Nor could it, because the proposition that the DPPA makes it illegal for courts to permit disclosure of evidence of DPPA violations not only undermines the statute's integrity, but the privacy interests protected by the DPPA and the authority of federal, state, and local courts. (*See* Petition, 6-9). This important issue should be promptly resolved by this Court.

II. THE FINAL CLAUSE OF § 2721(b)(4) IS NOT DEPENDENT ON ANY OTHER CLAUSE OF § 2721(b)(4)

Section 2721(b)(4) of the DPPA provides that personal information derived from motor vehicle records may be disclosed:

> (4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self regulatory body, including the service of process, investigation in anticipation of litiga-

> tion, and the execution or enforcement of judgments and orders, *or pursuant to an order of a Federal, State, or local court*.

(Emphasis added). UNITE argues that federal courts cannot issue orders that permit a party to use information from motor vehicle records under the final clause to § 2721(b)(4) unless the use also satisfies another exception stated in § 2721(b). This statutory interpretation is inconsistent with the statute's text.

Foremost, the final clause of § 2721(b)(4) begins with the disjunctive "or," which grammatically means that it is not dependent on prior clauses. "Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise." *Reiter v. Sonotone Corp.*, 442 U.S. 330, 337-38 (1979); *accord Garcia v. United States*, 469 U.S. 70, 73 (1984).[1]

Second, UNITE's interpretation renders the "pursuant to an order of a Federal, State, or local court" clause superfluous—the statute would have the same meaning if the clause did not exist. Reading this clause out of the statute is inconsistent with the "elementary canon of construction that a statute should be interpreted so as not to render one part inoperative." *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985). "In construing a statute we are obliged to give effect, if possible, to every word Congress used." *Reiter*, 442 U.S. at 337-38.

---

[1] UNITE's argument predicated on *ejusdem generis*, (UNITE Br., 17), is baseless because "pursuant to an order of a Federal, State, or local court" is not a collective or catch-all term for the words that precede the clause.

Finally, UNITE's interpretation is inconsistent with other terms of § 2721(b). Under § 2721(b)(1), "any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions" can use motor vehicle record information. A county dogcatcher can allow someone to use information from motor vehicle records under the DPPA. The notion that federal courts lack such authority defies credulity. Moreover, § 2721(b)(8) permits "use by any licensed private investigative agency or licensed security service *for any purpose permitted under this subsection*." 18 U.S.C. § 2721(b)(8) (emphasis added). Congress clearly knew how to make one section of § 2721(b) dependent on another section of § 2721(b). Congress chose not to do so with the inclusion of the clause "pursuant to an order of a . . . court" to § 2721(b)(4).

"Pursuant to an order of a Federal, State, or local court" means what it says: courts can issue orders that permit parties to use information from motor vehicle records. UNITE's argument, and the Third Circuit's conclusion, that the DPPA prohibits the court from issuing an order permitting the Foundation to use evidence of UNITE's known DPPA violations to notify the victims of those violations is clearly erroneous and must be reversed.[2]

---

[2] UNITE erroneously asserts that the Third Circuit's conclusion is consistent with three state court cases. (UNITE Br., 21-22). The "[p]ursuant to an order of a . . . court" exception was not relied upon by the plaintiffs, or analyzed by the courts, in the cases cited by UNITE.

III. THE FUTURE OUTCOME OF THIS CASE IF THE THIRD CIRCUIT'S DPPA RULING IS REVERSED HAS NO BEARING ON THE VALIDITY OF THIS PETITION

UNITE asserts that the petition should be denied because, if granted and the Third Circuit reversed, the Foundation would later lose the case on other grounds, namely standing or the merits of modifying the protecting order. (UNITE Br., 18-20, 24-26). This is false on both counts. The Foundation has standing to challenge the court's protective order because the order is preventing the Foundation from obtaining information (evidence of UNITE's DPPA violations) from another party willing to provide this information (the *Pichler* Plaintiffs). *See, e.g., United States v. Wecht*, 484 F.3d 194, 202-03 (3d Cir. 2007); *E.E.O.C. v. National Children's Center, Inc.*, 146 F.3d 1042, 1045 (D.C. Cir. 1998). The Foundation has strong grounds for modifying the court's protective order because there is no legitimate basis for preventing up to 12,000 individuals from learning that UNITE invaded their privacy rights under the DPPA.

In any event, the two issues UNITE asserts—which were appealed to the Third Circuit but not addressed by it due to its DPPA ruling—will be addressed by the Third Circuit if the decision at bar is reversed. The possible ultimate outcome of this case has no bearing on whether this Court should review the important issue squarely before it: does the DPPA prohibit courts from authorizing disclosure of evidence of violations of the DPPA?

CONCLUSION

UNITE fails to justify the Third Circuit's unnatural holding that the DPPA prohibits federal courts from authorizing the disclosure of evidence of DPPA violations to the victims of those violations. This holding permits the absurdity of UNITE using the DPPA to conceal a written log of up to 12,000 DPPA violations. This self-defeating interpretation of the DPPA must be reviewed and reversed. The petition should be granted.

Respectfully submitted,

WILLIAM L. MESSENGER
Counsel of Record
c/o NATIONAL RIGHT TO
WORK LEGAL DEFENSE
FOUNDATION, INC.
8001 Braddock Road
Suite 600
Springfield, VA 22160
(703) 321-8510
wlm@nrtw.org

Counsel for Petitioner